In the High Court of Punjab and Haryana at Chandigarh

CWP No. 8499 of 2006 (O&M)

Date of decision: 26.10.2006

Om Parkash

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Kishan Lal Goyal, Advocate,

for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,

for the respondents.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 26.5.2005 (P-5) appointing Shri R.L. Sehgal, Superintendent, as Enquiry Officer, as well as letter dated 1.9.2005 (P-8) rejecting the request of the petitioner for staying the

departmental proceedings. Subsequent order dated 25.11.2005 (P-9) has also been challenged whereby Shri Ishwar Singh Sheokan, Assistant Director (C.C.)-respondent No. 3 has been appointed as Enquiry Officer. A further prayer has been made for directing the respondents to stay the departmental inquiry proceedings during the pendency of criminal trial in case FIR No. 4, dated 21.7.2004, registered under Section 7, 13(2) of the Prevention of Corruption Act, 1988, at Police Station Vigilance, U.T. Chandigarh.

Brief facts of the case are that the petitioner joined as Clerk in the office of respondent No. 2 on 19.7.1994 and was posted as such in the office of the Director, Primary Education Haryana, Chandigarh. He was deputed in Teacher Establishment-I Branch on 7.9.2001. On 21.7.2004, Naresh Kumar, J.B.T. Teacher, working in Government Primary School Gumthala Rao (Yamunanagar) made a complaint to the Senior Superintendent of Police, Vigilance, Chandigarh, with the allegation that for issuing his individual transfer orders the petitioner has demanded Rs. 13,000/- as illegal gratification. On the basis of the aforementioned complaint the police of State Vigilance Bureau, Haryana, Panchkula laid a trap and caught the petitioner red handed and above mentioned FIR has been registered against him. Thereafter, on 22.7.2004, respondent No. 2 placed the petitioner under suspension w.e.f. 21.7.2004 (P-2). After completing the investigation, the police submitted challan in the Court of Additional Sessions Judge, Chandigarh on 10.7.2005. Vide order dated 18.2.2005 (P-3) respondent No. 2 issued charge sheet under rule 7 of the Haryana Civil Service (Punishment and Appeal)

Rules, 1987. On 13.2.2005, the petitioner made a representation to respondent No. 2 for staying the departmental proceedings till the decision of the criminal case, which has been rejected vide impugned order dated 1.9.2005 (P-8).

The aforementioned facts un-equivocally shows that the petitioner has been charged with for demand and acceptance of illegal gratification in a trap case. The criminal trial is yet to commence and the officer is yet to be charged by the criminal Court. When such like charges are levelled in a departmental proceeding then it is not easy to conclude that the defence of the petitioner is likely to be prejudiced merely because he may have to disclose those facts which he may like to disclose before the criminal Court. Similarly, charge of misconduct can also be proved as it would not be required of him to disclose his defence. It is trite to observe that the standard of proof in both the proceedings in any case is entirely different.

The law on the aforementioned issue is also well settled, inasmuch as, it has been repeatedly held by Hon'ble the Supreme Court that disciplinary proceedings should not be stayed as a matter of course. The prejudice to the defence of a delinquent officer before the criminal Court is only one factor which is laced with a number of other factors, namely, that the charges must be the same and the case must involve complicated questions of law and facts. The aforementioned view has been taken by their Lordships' in para 14 and 15 of the judgment in the case of **State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417**, which reads as under:-

" 14. It would be evident from the above decisions

that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that "the defence of the employee in the criminal case may not be prejudiced". This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. [(1960) 3 SCR 227 : AIR 1960 SC 806] and Tata Oil Mills [(1964) 7 SCR 555 : AIR 1965 SC 155] is also not an invariable rule. It is

only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be – and should not be – delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. *The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements.* The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the

charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.

15. We are quite aware of the fact that not all the disciplinary proceedings are based upon true charges; some of them may be unfounded. It may also be that in some cases, charges are leveled with oblique motives. But these possibilities do not detract from the desirability of early conclusion of these proceedings. Indeed, in such

cases, it is all the more in the interest of the charged officer that the proceedings are expeditiously concluded. Delay in such cases really works against him."

The aforementioned view has been approved in the cases of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679**; **Kendriya Vidyalaya Sangathan v. T. Srinivas, (2004) 7 SCC 442** and **State Bank of India v. R.B. Sharma, (2004) 7 SCC 27**. In Capt. M. Paul Anthony's case (supra) some of the factors which would govern the issue of staying the departmental proceedings during the pendency of a criminal case, have been summarized in para 22 and the same reads as follows:-

" 22. (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the

nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

When the facts of the present case are examined in the light of the principles laid down in Capt. M. Paul Anthony's case (supra) and other judgments noticed above, we cannot resist the conclusion that the instant petition lacks merit and is, thus, liable to be dismissed. There is no charge yet framed by the criminal Court which may constitute the basis for comparing the same with the charges the delinquent officer is facing in the departmental proceedings. The names of the witnesses are yet to surface in the

criminal trial. We are further of the view that departmental proceedings cannot be permitted to wait endlessly till the conclusion of criminal trial, which may take its own time because it would not be in the interest of respondent department that a person like the petitioner, who is charged with serious misdemeanour should be continued in office indefinitely which the criminal proceedings are likely to consume. Staying the proceedings at this stage would only serve the interest of the accused. On the basis of the aforementioned factors it is not possible for us to accept the plea raised by the petitioner that the departmental proceedings shall remain stayed till the conclusion of the criminal proceedings. Therefore, we do not find any merit in the instant petition.

For the reasons aforementioned, this petition fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

October 26, 2006

Pkapoor